United States Bankruptcy Court
Western District of Washington

In re:
Adam R Grossman
Debtor

Case No. 10-19817-MLB
Chapter 7

CERTIFICATE OF NOTICE

District/off: 0981-2 User: cynthiah Page 1 of 3 Date Rcvd: Jul 16, 2013
Form ID: pdf Total Noticed: 62

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Jul 18, 2013.

db #+Adam R Grossman, 5766 - 27th Ave. NE, Seattle, WA 98105-5512
aty +Jeffrey B Wells, 500 Union Street, Ste. 502, Seattle, WA 98101-2332
aty +M Moburg, Routh Crabtree Olsen PS, 13555 SE 36th St #300, Bellevue, WA 98006-1489
aty +Mark Moburg, Routh Crabtree Olsen PS, 13555 SE 36th St Ste 300, Bellevue, WA 98006-1489
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sr +Jill Borodin, c/o Crocker Law Group PLLC, 720 Olive Way #1000, Seattle, WA 98101-1881
sr +Law Office of Matthew D. O'Conner, 8011 Greenwood Ave. N., Seattle, WA 98103-4228
sr +Lyman C Opie, c/o Davis Wright Tremaine, 1201 Third Avenue #2200, Seattle, WA 98101-3047
sp +Stephen Dean, 1610 West Street, Suite 2, Redding, CA 96001-1767
sp +Tsai Law Company, 2101 4th Avenue Suite 1560, Seattle, WA 98121-2316
sr +Wells Fargo Bank NA, Routh Crabtree Olsen, P.S., c/o Mark MoBurg, 13555 SE 36th ST, Suite 300, Bellevue, WA 98006-1489
sr +Wells Fargo Bank, N.A., ROUTH CRABTREE OLSEN, P.S., Jennifer Aspaas, 13555 SE 36th St.,, Suite 300, Bellevue, WA 98006-1489
952674523 +Abraham Wyner, 1309 Sussex Rd, Wynnewood, PA 19096-2526
953723080 +Arthur Bernstein, 11661 San Vicente Blvd Ste 820, Los Angeles, CA 90049-5116
953584560 ++BANK OF AMERICA, PO BOX 982238, EL PASO TX 79998-2238
(address filed with court: FIA CARD SERVICES, N.A., PO Box 15102, Wilmington, DE 19886-5102)
952674514 +Bank of America, 4161 Piedmont Pkwy, Greensboro, NC 27410-8119
952860697 +Beth Shalom Preschool, 6800 35th Ave NE, Seattle, WA 98115-7334
952860698 +Bugni Law Firm, 11320 Roosevelt Way NE, Seattle, WA 98125-6228
953723505 +CC & L Accounting and Payroll, 1698 Market Street, Redding, CA 96001-1021
952860700 ++CITIMORTGAGE, 5280 CORPORATE DRIVE, BANKRUPTCY DEPARTMENT, ATTENTION MC0023, FREDERICK MD 21703-8351
(address filed with court: Citi Mortgage, 5280 Corporate Drive MC0257, Frederick, MD 21703)
952860699 +California Franchise Tax Board, P.O. Box 942857, Sacramento, CA 94257-0001
952674515 +Chase Bank USA, 800 Brooksedge Blvd., Westerville, OH 43081-2822
952750609 Chase Bank USA, N.A., PO Box 15145, Wilmington, DE 19850-5145
952674518 +Cindy Loegering, PO Box 993115, Redding, CA 96099-3115
952674516 +CitiBank Student Loan, PO Box 22876, Rochester, NY 14692-2876
952860701 +City of Seattle Parking Enforcement, 600 5th Ave, Seattle, WA 98104-1900
953037062 +Congregation Beth Shalom, Early Childhood Center, Attn Tzachi Litov, 6800 35th Avenue NE, Seattle WA 98115-7334
952924048 Franchise Tax Board, Bankruptcy Section MS A340, Sacramento CA 95812-2952
953723062 +Harold J and Cynthia M Hendricks Family Trust, 2410 Heritage Oaks Dr, Alamo, CA 94507-1445
953722738 +Jeff Bernstein, 1916 2nd Ave N, Seattle, WA 98109-2505
952860702 +Jessica Johnson & Michael Bullock, 773 Metro Way, Redding, CA 96003-2765
953198701 +Jill & Brian Reynolds, 9 Laurel Circle, Lutherville, MD 21093-4753
952860705 Jill & Bryan Reynolds, 66 Echo Way Court, Towson, MD 21286
953722491 +Jill Borodin, Crocker Law Group, 720 Olive Way Suite 1000, Seattle WA 98101-1881
953722946 +Joanna Strober, 14355 Miranda Way, Los Altos, CA 94022-2032
953723066 +John Ettinger, 213 E 73rd St Ph A, New York, NY 10021-3658
953723065 +Lyman Opie, 60 Magazine St, Cambridge, MA 02139-3934
952674520 Lyman Opie, c/o Hugh R McCulough, Davis Wright Tremaine LLP, 1201 Third Avenue Suite 2200, Seattle WA 98101-3045
953723043 +Marc Weitz, 265 Ardsley Rd, Scarlsdale, NY 10583-2626
952860703 +Ms. Kerith Lisa, P.O. Box 42691, Tucson, AZ 85733-2691
953198700 +Peter Zieve, 10517 62nd Pl W, Mukilteo WA 98275-4639
953722629 +Ptarmigan Real Estate Fund LLC, 4023 Kennett Pike Ste 134, Greenville, DE 19807-2018
953309566 +Rob Middleton, House of Realty Inc, 1707 Place Street, Redding CA 96001-1715
953722674 +Robert Delles Family Trust, 1911 Sacramento St, San Francisco, CA 94109-3419
953761854 +Shila Clement, 1911 Sacramento Way, San Francisco CA 94109-3419
953198699 +Stephen LeBlanc, c/o Quine Intellectual Property Law Grou, 2033 Clement Avenue, Ste. 200, Alameda, CA 94501-7907
953722543 +Tanager Fund LP, 4001 Kennett Pike Ste 134, Greenville, DE 19807-2000
953723081 +Terrington Davies Capital Management LLC, 4023 Kennett Pike Ste 134, Greenville, DE 19807-2018
953723127 +Terrington Davies LLC, 4023 Kennett Pike Ste 134, Greenville, DE 19807-2018
953309567 Wells Fargo Bank NA, PO Box 6995, Portland OR 97228-6995
952780036 +Wells Fargo Bank, N.A., 3476 Stateview Blvd., MAC # X7801-014, Ft Mill, SC 29715-7203
952738298 Wells Fargo Bank, N.A., Home Equity Group, X2303-01A, 1 Home Campus, Des Moines, IA 50328-0001
952674522 +Wells Fargo Equity Resources, 3476 State View Blvd, Fort Mill, SC 29715-7203
952674521 +Wells Fargo Home Equity, PO Box 31557, Billings, MT 59107-1557

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.

sr E-mail/PDF: rmscedi@recoverycorp.com Jul 17 2013 00:51:55 GE Money Bank, c/o Office Manager, Recovery Management Systems Corp, 25 SE 2nd Ave #1120, Miami, FL 33131-1605
952674517 E-mail/PDF: mrdiscen@discoverfinancial.com Jul 17 2013 00:57:53 Discover Card, 12 Reads Way, New Castle, DE 19720
952683338 E-mail/PDF: mrdiscen@discoverfinancial.com Jul 17 2013 00:57:53 Discover Bank, Dfs Services LLC, PO Box 3025, New Albany, OH 43054-3025
952771523 E-mail/Text: cio.bncmail@irs.gov Jul 17 2013 00:47:12 Internal Revenue Service, P.O.Box 21126, Philadelphia, PA 19114

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center (continued)

953089860 +E-mail/Text: USTPREGION18.SE.ECF@USDOJ.GOV Jul 17 2013 00:47:45
Office of the United States Trustee, 700 Stewart Street, Suite 5103, Seattle, WA 98101-4438

952768583 E-mail/PDF: rmscedi@recoverycorp.com Jul 17 2013 00:51:10
Recovery Management Systems Corporation, 25 S.E. 2nd Avenue, Suite 1120,
Miami, FL 33131-1605

952674519 +E-mail/PDF: pa_dc_claims@salliemae.com Jul 17 2013 00:52:31 Sallie Mae, 1002 Arthur Dr.,
Lynn Haven, FL 32444-1683

953614435 +E-mail/PDF: pa_dc_claims@salliemae.com Jul 17 2013 00:52:04 Sallie Mae, c/o Sallie Mae Inc.,
220 Lasley Ave., Wilkes-Barre, PA 18706-1496

TOTAL: 8

***** BYPASSED RECIPIENTS (undeliverable, * duplicate) *****

acc	Bruce Devereaux
r	House of Realty Inc
r	Rob Middleton
cr	Wells Fargo Bank NA
aty*	+Mark Moburg, Routh Crabtree Olsen PS, 13555 SE 36th St #300, Bellevue, WA 98006-1489
aty*	+Mark Moburg, Routh Crabtree Olsen PS, 13555 SE 36th St. #300, Bellevue, WA 98006-1489
953723086	##+Alexandra Grossman, 5766 27th Ave NE, Seattle, WA 98105-5512
952860704	##+Michael Powers, 1679 Strause Lane, Redding, CA 96003-7507
953723085	##+Naomi Grossman, 5766 27th Ave NE, Seattle, WA 98105-5512

TOTALS: 4, * 2, ## 3

Addresses marked '+' were corrected by inserting the ZIP or replacing an incorrect ZIP.
USPS regulations require that automation-compatible mail display the correct ZIP.

Addresses marked '++' were redirected to the recipient's preferred mailing address pursuant to 11 U.S.C. 342(f)/Fed.R.Bank.PR.2002(g)(4).

Addresses marked '#' were identified by the USPS National Change of Address system as requiring an update. While the notice was still deliverable, the notice recipient was advised to update its address with the court immediately.

Addresses marked '##' were identified by the USPS National Change of Address system as undeliverable. Notices will no longer be delivered by the USPS to these addresses; therefore, they have been bypassed. The debtor's attorney or pro se debtor was advised that the specified notice was undeliverable.

I, Joseph Speetjens, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 9): Pursuant to Fed. R. Bank. P. 2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Jul 18, 2013 **Signature:** Joseph Speetjens

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on July 15, 2013 at the address(es) listed below:

Bradley Boswell Jones on behalf of Creditor Wells Fargo Bank NA bbjlaw301@hotmail.com, wmp935@hotmail.com
Bruce P. Kriegman on behalf of Trustee Ronald G Brown bkriegman@kriegmanlaw.com, sblan@kriegmanlaw.com
Denice E Moewes on behalf of Plaintiff Ronald G Brown dmoewes@aol.com, tessmkent@aol.com
Gloria Z Nagler on behalf of Spec. Counsel Tsai Law Company gloria@naglerlaw.com, rebecca@naglerlaw.com
Hugh R. McCullough on behalf of Special Request Lyman C Opie hughmccullough@dwt.com, elainehuckabee@dwt.com;seadocket@dwt.com
Hugh R. McCullough on behalf of Defendant Lyman C Opie hughmccullough@dwt.com, elainehuckabee@dwt.com;seadocket@dwt.com
Jeffrey B Wells on behalf of Attorney Jeffrey B Wells paralegal@wellsandjarvis.com
Jennifer L Aspaas on behalf of Special Request Wells Fargo Bank, N.A. ecf@rcolegal.com
Jennifer L Aspaas on behalf of Creditor PNC Bank, National Association ecf@rcolegal.com
Jennifer L Aspaas on behalf of Creditor Wells Fargo Bank, N.A. ecf@rcolegal.com
John H O'Rourke on behalf of Spec. Counsel Tsai Law Company johnhorourke@comcast.net
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Martin L. Smith on behalf of US Trustee United States Trustee martin.l.smith@usdoj.gov, Young-Mi.Petteys@usdoj.gov;Tara.Maurer@usdoj.gov;Martha.A.VanDraanen@usdoj.gov
Matthew D. O'Conner on behalf of Special Request Law Office of Matthew D. O'Conner pacer@mdolaw.com, dana@mdolaw.com
Ronald G Brown rgblaw@nwlink.com, rgbrown@ecf.epiqsystems.com
Shelly Crocker on behalf of Special Request Jill Borodin scrocker@crockerlaw.com, thao@crockerlaw.com;nancy@crockerlaw.com;aaron@crockerlaw.com;ecf@crockerlaw.com
Steven J Reilly on behalf of Special Request Jill Borodin sreilly@crockerlaw.com, thao@crockerlaw.com;nancy@crockerlaw.com;aaron@crockerlaw.com;ecf@crockerlaw.com
United States Trustee USTPRegion18.SE.ECF@usdoj.gov
William L. Courshon on behalf of US Trustee United States Trustee bill.l.courshon@usdoj.gov, Young-Mi.Petteys@usdoj.gov;Tara.Maurer@usdoj.gov;Martha.A.VanDraanen@usdoj.gov

TOTAL: 19

Judge Marc L. Barreca
Hearing Location: Room 7106
700 Stewart St., Seattle, WA 98101
Hearing date: August 30, 2013
Hearing time: 9:30 a.m.
Response due: August 23, 2013

UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

IN RE: ADAM GROSSMAN, Debtor.	CHAPTER 7 CASE NO. 10-19817 TRUSTEE'S MOTION FOR ORDER CONFIRMING THAT REAL PROPERTY IS PROPERTY OF THE ESTATE; AND NOTICE OF HEARING

TO: Creditors, Parties-in-Interest and the Clerk of the Court

I. NOTICE

PLEASE TAKE NOTICE that the below motion shall be heard on **Friday, August 30, 2013 at 9:30 a.m. before Judge Marc L. Barreca at the U.S. Bankruptcy Court, U.S. Courthouse, Room 7106, 700 Stewart Avenue, Seattle, Washington 98101**. The Clerk is requested to note the motion on the docket for that date and time.

PLEASE TAKE FURTHER NOTICE that, in accordance with local rules, any responses or objections to the below motion must be made in writing and the original filed with the US Bankruptcy Court, in Room 6301, US Courthouse, 700 Stewart Street, Seattle, Washington 98101, one copy served upon Judge Barreca via the Court's electronic case filing ("ECF") system or via the Clerk's Office, and one copy served upon the undersigned **no later than the "Response due" date shown in the upper**

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right hand corner of this pleading. If responses or objections are not timely filed, the Court may strike the hearing and enter an order granting the relief requested.

II. MOTION

COMES NOW Ronald G. Brown, the trustee in the above entitled case, and moves the Court for an order as follows: (a) confirming that the real property located at 868 Montcrest Drive, Redding, California (the "Montcrest Property") is property of the estate; (b) amending the May 16, 2011 order authorizing the Trustee's employment of Rob Middleton and the House of Realty, Inc. (Docket No. 163) to include the Montcrest Property among the property for which the Trustee may employ Mr. Middleton as his real estate agent; and (c) authorizing the Trustee to execute any agreements, instruments or any other documents which he deems, in his sole discretion, necessary to carry out the requested order.

A. Relevant Background

The relevant history and background, on a chronological basis, related to this motion may be summarized as follows:

The present case was commenced under Chapter 11 on August 19, 2010. At the time of filing, the Debtor and his then spouse, Jill Borodin, were engaged in dissolution proceedings in King County Superior Court (Cause No. 09-3-02955-9-SEA, hereinafter, the "Dissolution Action""). On October 22, 2010, Ms. Borodin filed a motion for appointment of a Chapter 11 trustee [Docket No. 32]. In the motion, Ms. Borodin stated that a trustee needed to be appointed for, among other reasons, the following: (a) "With hundreds of thousands of dollars at stake, and the possibility of recovering large sums as fraudulently and/or preferentially transferred, the cost of appointing a trustee in this case is well-justified." [Docket No. 32 at page 9, lines 2 - 8]; and (b) "[D]ue to the tremendous interest of the creditors of the estate to recover substantial sums as fraudulent and/or preferential transfers, it is in the best interests of creditors that the Debtor remain under the Bankruptcy Court's supervision in a Chapter

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11." [*Id.* at 10, lines 1 - 8.][1]

Ms. Borodin filed an ex parte motion on November 9, 2010 requesting confirmation that the automatic stay was not in effect pursuant to §362(c)(4) (due to two Chapter 11 case filings of the Debtor within the year prior to filing the present case). On November 12, 2010, the Court entered an order on Ms. Borodin's ex parte motion wherein it held that "The automatic stay under 11 U.S.C. §362(a) is not in effect." Docket No. 61.

A divorce decree was entered in the Dissolution Action on December 14, 2010 (the, "Decree"). A copy of the relevant excerpts of the Decree is attached as Exhibit A to the Declaration of Trustee's Attorney in Support of Motion for Order Confirming That Real Property Is Property of the Estate (hereinafter, the "Declaration", a copy of which is on file with the Court and available via ECF). The Decree characterized and divided the marital property. The Decree recognized that the Montcrest Property was community property and awarded it to Ms. Borodin. The Decree further provided for the Debtor to transfer the Montcrest Property to Ms. Borodin and if he did not, for a third party to be appointed under CR 70 to make the transfer.

The Bankruptcy Court granted Ms. Borodin's motion for appointment of a trustee on December 22, 2010. Ronald G. Brown was thereafter appointed trustee.

Post-bankruptcy, the Debtor transferred his interest in the Montcrest Property and various other pieces of real property without Court authorization (hereinafter collectively the, "Transfers"). The Trustee commenced an adversary proceeding to avoid the Transfers (Adversary Proceeding # 11-01954 which is hereinafter called, the "Adversary Action").[2] The Court subsequently entered a series of

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[1] In her motion for appointment of a trustee, Ms. Borodin acknowledged that among the potential claims a trustee would pursue is avoidance of post-bankruptcy transfers. *See,* Docket No. 32 at 6, lines 29 - 43 and at 7, lines 1-3.

[2] The Adversary Action was commenced after the date of entry of the order, upon the Trustee's motion, converting the case to Chapter 7 (March 11, 2011). Ronald G. Brown was appointed as the Chapter 7 trustee.

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default orders and default judgments avoiding the Transfers. Docket Nos. 30, 82 and 123.[3] In the Findings of Fact Conclusion of Law and Default Judgment [Docket No. 30], the Court ordered, among other things, that the Montcrest Property together with the other real property subject to the Action "is quieted in the name of the trustee" as against defendant, Keywest Financial LLC.

The Trustee and Ms. Borodin negotiated a settlement, subject to Court approval, regarding the disposition of the Montcrest Property. The main terms of that settlement may be summarized as follows: The parties would stipulate that the Montcrest Property is property of the estate for purposes of the settlement and the Adversary Action. The Trustee would sell the property and obtain any further necessary orders to avoid and wipe out all post-petition liens relating thereto. The net proceeds of sale would be used to pay the legal fees related to the Trustee's avoidance of liens and sale of the property. The balance of the net proceeds would be paid to Ms. Borodin except to the extent of $10,000 which would be applied to pay any community property claims Ms. Borodin was ordered to pay in the Dissolution Action.[4] After notice and hearing, the Court denied the motion to approve the settlement. The Trustee subsequently pursued negotiations with Ms. Borodin regarding a revised settlement which were unsuccessful. Since negotiations broke down, the Trustee has further researched the status of the Montcrest Property and concluded that it more than likely is property of the estate.[5] Accordingly, he seeks an order confirming that the Montcrest Property is property of estate so that he can move forward with liquidating it (the last known asset of the estate) and close the case.

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[3] The Court entered a default judgment in the Action avoiding the transfer of the Montcrest Property against Defendant, Evergreen Home Mortgage Services, Inc. Docket No. 123. In addition, the Court entered an order of default as to the only other known party claiming any title to the Montcrest Property, the 868 Montcrest Drive Family Trust.

[4] As of the time of the settlement, there did not appear to be any claims filed in the bankruptcy that fail within that category.

[5] This represents a change in the Trustee's understanding and position. In prior pleadings, the Trustee indicated his understanding that the Montcrest Property was not property of the bankruptcy estate but, notwithstanding same, the equity in the property had to be used to pay the community claims of the bankruptcy estate.

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Rob Middleton has served as the Trustee's real estate agent pursuant to order entered on May 16, 2011 [Docket No. 163, hereinafter the "May 16th Order"]. With Mr. Middleton's assistance, upon Court authorization, the Trustee sold two properties located in Redding. Based upon informal consultations with Mr. Middleton, the Trustee believes that the Montcrest Property has a value of about $205,000. The Trustee has reviewed a title report for the Montcrest Property. It shows that the it ostensibly the property is titled in the name of Terrington Davies Capital Management, LLC ("Terrington") and that the only encumbrance against the Property, taking into account the avoidance of Transfers described above, is a purported post-bankruptcy deed of trust for the benefit of Ptarmigan Real Estate Fund LLC ("Ptarmigan) for $18,000. Terrington and Ptarmigan are entities used by the Debtor to, among other things, carryout the transfer of the Debtor's interest in the Montcrest Property on an unauthorized basis. Both entities are solely owned by the Debtor. If the Court grants the present motion, the Trustee will employ Mr. Middleton as his real estate agent to sell the Montcrest Property on the same terms proposed in the motion upon which the May 16th Order was entered (providing for a commission of 6% of the gross sale price). A copy of Mr. Middleton's proposed listing agreement is attached to the Declaration as Exhibit B.[6]

B. Analysis

Under well established bankruptcy law as of the date of bankruptcy filing, any separate property of Mr. Grossman as well as any property of the Grossman/Borodin marital community became property of the bankruptcy estate. 11 USC §541(a). Thus among other real property, the Montcrest property, which was indisputably property of the marital community (a fact confirmed by the Decree), became property of the bankruptcy estate on the date of filing. The Decree was entered after the bankruptcy but

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[6] The copy of the agreement attached as Exhibit B is in substantially the form expected which the Trustee expects to execute. The Trustee, however, reserves all rights to revise the agreement to the extent he deems it necessary and appropriate to comply with applicable bankruptcy law.

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before any trustee was appointed. There is nothing of which the Trustee is aware in the Decree or order confirming that the stay was not in effect that stripped title to the Montcrest Property from the bankruptcy estate. A Bankruptcy Court's order granting relief from the stay is strictly construed. *See, In re Wardrobe,* 559 F.3d 932, 935 (9th Cir. 2009). In any event, Bankruptcy Courts have original and exclusive jurisdiction over property of a bankruptcy estate. 28 U.S.C. §§1334(a) and 1334 (e). *See, In re William N. Simon,* 153 F.3d 991 (9th Cir.1998). The Superior Court thus did not have jurisdiction, notwithstanding that the stay was not in effect, to enter an order removing the Montcrest Property from the bankruptcy estate. Furthermore, neither Ms. Borodin nor any third party have the power to transfer title of the Montcrest Property. Only the Trustee has the power subject to his avoidance of the Debtor's unauthorized post-bankruptcy transfer thereof.[7]

The Montcrest Property is thus property of the bankruptcy estate and the Trustee is entitled to entry of an ordering confirming same.

Any party who desires any further information regarding this motion, should contact the undersigned.

Conclusion

Therefore, the Trustee requests that the Court enter an order granting this motion.

DATED this 15th day of July, 2013

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/s/ Bruce P. Kriegman

Bruce P. Kriegman, WSBA #14228
Attorney for Trustee

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[7] The State Court lacks the power to effectuate any different outcome since it has no authority over the bankruptcy estate or the Trustee.

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